

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Patrick Guess, # 253980,)	C.A. No. 9:08-3076-TLW-BM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Jon Ozmint, Agency Director;)	
Robert Ward, Division of Operations;)	
Dennis Patterson, State Classification Committee;)	
Cecilia Reynolds, Warden of Kershaw Correctional)	
Facility; Monica Counts, SCDC State)	
Classification; and Lisa Roach, Case Worker)	
Classification Division SCDC Kershaw)	
Correctional Institute,)	
)	
Defendants.)	
)	

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bristow Marchant, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Marchant recommends that the defendants’ motion for summary judgment with regard to plaintiff’s § 1983 classification claim be granted, and that this claim be dismissed with prejudice. The Report further recommends that all of plaintiff’s remaining claims being asserted under § 1983 should be dismissed without prejudice, for failure to exhaust administrative remedies. Finally, with respect to the numerous state law claims and violations asserted by plaintiff in his complaint in Civil Action No. 9:08-3076, the Report recommends that if the Court adopts the recommendations contained in the Report with respect to plaintiff’s Federal

claims, then the remaining state law claims should be remanded back to state court for resolution. (Doc. # 61). Plaintiff has filed objections to the Report. (Doc. # 63).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto.

For the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 61), plaintiff's objections are **OVERRULED** (Doc. # 63), and defendants' motion for summary judgment with regard to plaintiff's § 1983 classification claim is **GRANTED**, and this claim is **DISMISSED** with prejudice. Further, all of plaintiff's remaining claims being asserted under § 1983 are **DISMISSED** without prejudice, for failure to exhaust administrative remedies. Finally, with respect to the numerous state law claims and violations asserted by plaintiff in his complaint in Civil Action No. 9:08-3076, these claims are **REMANDED** back to state court for resolution.

IT IS SO ORDERED.

October 6, 2009
Florence, SC

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE